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November 13, 2001

Mr. Andrew Stephens
Director of Steel Trade Policy
Office of United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: *Request to Exclude Carbon Steel Slab*

Dear Mr. Stephens:

On behalf of Instituto Brasileiro Siderúrgica ("IBS"), the Brazilian Steel Institute, and five of its member companies[1], we hereby make the following submission in accordance with the Office of the U.S. Trade Representative's Notice of Request for Public Comments on Potential Action Under Section 203 of the Trade Act With Regard to Imports of Certain Steel, 66 Fed. Reg. 54321 (Oct. 21, 2001). We respectfully request that the President exclude carbon steel slab from any restrictions that he may determine to impose on flat-rolled carbon steel products. Should the President nevertheless determine to restrict slab imports, we ask that he exclude specific types of slab that are not made in sufficient quantities by the domestic industry. A detailed discussion of our exclusion request follows this cover letter.

Respectfully Submitted,

Christopher Dunn
Willkie Farr & Gallagher

Counsel to Brazilian Producers

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1 The five member companies are Aço Minas Gerais, S.A. ("Açominas"), Companhia Siderúrgica Nacional ("CSN"), Companhia Siderúrgica Paulista ("COSIPA"), Companhia Siderúrgica de Tubarão ("CST"), and Usinas Siderúrgicas de Minas Gerais ("USIMINAS").

I. THE PRESIDENT SHOULD EXCLUDE CARBON STEEL SLAB FROM ANY RESTRICTIONS THAT HE MAY IMPOSE ON CARBON STEEL FLAT PRODUCTS.

Should the President determine to impose restrictions on the imports of carbon steel flat products pursuant to the Commission's recommendation, he should nevertheless exclude carbon steel slab from those restrictions. Such an exemption is necessary in order to permit US steel mills access to the raw materials they need to keep their steel rolling facilities fully utilized, and to remain competitive in the production of finished steel products.

Data developed by the US International Trade Commission ("ITC") in its Staff Report show that the capacity of the US industry to roll plate and hot-rolled flat products is 82.2 million tons.[2] That same Staff Report shows domestic slab capacity of 74.4 million tons.[3] Thus, there is a shortfall of some 8 million tons between US rolling capacity and US capacity to produce the slab used as the raw material for rolled products.

This shortfall of capacity has always been made up by imports. In 1999 and 2000, US mills imported about 7.3 million short tons of slab each year. They import this slab because they have to. As numerous US producers have testified, slab is "simply not available domestically." This is the result of a decades-old adjustment in the industry as mills close unproductive raw steel assets for environmental and efficiency reasons. US mills have never been significant participants in the merchant market for slab, shipping less than 10 percent of all commercial slab shipments over the past five years.

At the ITC's hearings, numerous US producers testified to their irreplaceable needs for imported slab to keep their rolling mills fully operational. AK Steel testified that it needs 800,000 tons a year.[4] California Steel Industries testified that it needs 1.8 million tons a year.[5] Lone Star Steel testified that it needs 600,000 tons.[6] Oregon Steel testified that it bought 300,000 tons in 2000, most of it imported, and will need at least that much slab in the future because of its structural imbalance.[7] Duferco-Farrell will need at least 1 million tons based on the capacity of its hot strip mill. And Wheeling Pittsburgh testified that it needs 800,000 tons.[8] Virtually all of these mills testified that they must import this slab because it is not available commercially.

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2 USITC, Staff Report to the Commission on Investigation No. TA-201-73, Tables FLAT-C-3 and FLAT-C-4.

3 *Id.*, Table FLAT-C-2.

4 Tr. at 456 (remedy) (electronic version).

5 Tr. at 591 (injury) (electronic version).

6 Tr. at 379 (remedy) (electronic version).

7 Tr. at 593-594 (injury) (electronic version).

8 Tr. at 150-151 (remedy) (electronic version).

The current needs of US mills for imported slab are likely to grow in the next few years. Many US mills have at least some old, inefficient blast furnaces that will either have to be significantly repaired and upgraded, or permanently shut down. Those mills that upgrade their blast furnaces will need significant amounts of slab while their furnaces are under renovation. Those that permanently shut down their blast furnaces will need to import slab to maintain their rolling facilities. Even those mills, such as Wheeling Pittsburgh, that intend to replace their blast furnaces with more modern, cost-effective electric arc furnaces, will need to purchase slab both during the transition period until their electric arc furnaces begin production, and afterward.

It is virtually impossible that the current and increased needs of US mills for purchased slab can be met by increased domestic production of slab. Remember that if the President were to impose import restraints on finished flat products, imports of those products would decrease significantly, and the gap between domestic supply and demand would have to be met by increased domestic production of finished products. US mills thus would have every incentive to channel their increase in steel production to downstream products, where profit margins are higher, rather than to increased domestic commercial sales of slab.

Remember too that, as many US mills testified to the ITC, the potential domestic suppliers of slab are themselves competitors with the purchasers for the finished products. Potential domestic suppliers of slab are not likely to provide quantities of slabs at prices that would permit the purchasing US mills to compete on an even basis with them; rather, they are likely to provide this slab only at prices that would make it impossible for the purchasing mills to compete with them for the finished products.

If the President were to impose any real restriction on imported slabs --either in the form of tariffs or in the form of restrictive quotas -- the result would be an increase in the price of slab to those US companies that depend on slab purchases to keep their rolling mills operating. These companies have testified that they will be unable to pass on these increased slab prices to their customers for downstream products because of the severe price pressures on those downstream products. Even the econometric models proposed by those US mills seeking restrictions show that a 50% tariff on finished products would raise the prices of those products by less than two percent. US mills that purchase slab would thus be squeezed between rising prices for their raw materials and flat prices for their finished products. The very existence of these mills would be imperiled.

In order to avoid damaging and perhaps even destroying those US mills that depend on purchased slab, therefore, the president must exclude slabs from any restrictions that he may otherwise impose on finished flat-rolled products.

II. SHOULD THE PRESIDENT NOT EXCLUDE ALL SLABS FROM THE REMEDY, HE SHOULD AT LEAST EXCLUDE SPECIFIC TYPES OF SLAB THAT CANNOT BE PRODUCED IN THE US IN SUFFICIENT COMMERCIAL QUANTITIES.

There are specific grades and specifications of slab that should be excluded from any remedy because the domestic industry cannot producers these grades and specifications in sufficient quantity, if at all, to meet their own demand and the demand of end users. The grades and specifications include:

1. Heavy Slab

There are no US mills than can produce slab in thicknesses greater than 250mm (about 10 inches). Because of the high cost of building hot-end facilities, it is virtually impossible that there could be any new domestic production of any such slab over the period of relief permitted by the statute. Thus, this product should be excluded from any remedy imposed.

2. Thin Slab

US mills also cannot produce slab in thicknesses less than 190mm (about 7 ½ inches), and will not be able to do so. This product should therefore be excluded from any remedy.

3. Ultra-low Carbon Slab

There are three principal types of ultra-low carbon steel that are in common use in the US market. These are: (1) stabilized interstitial-free ("IF") steel; (2) "bake-hardenable" steel, and (3) motor lamination steel. All three types of ultra-low carbon steel share a common characteristic: they can be produced only by use of vacuum-degassing equipment with deep vacuum capacity (less than 1 torr of vacuum), to produce a carbon content of about 0.001% at the end of the process.

These three types of steel are in particular demand by the automotive market. They have characteristics of exceptional formability and/or paint adhesion, allowing automotive producers to produce lighter-weight vehicles while at the same time reducing wear and tear in the process of producing the parts.

Unlike the case of the dimensional characteristics mentioned above, these types of ultra-low carbon steel can be manufactured in the US. However, the capacity of US mills to produce these types of steel is far less than the demand for these steels in the US automotive market. The cost of building vacuum degassing facilities is very high -- between $30 and $40 million, and construction can take 18 months. Hence, it is very unlikely that sufficient vacuum capacity will be built in the US during the period of statutory relief to meet the demands of the automotive market.

The tendency of US mills is to produce as much of these types of steel as they can from their own facilities, but to import slab to meet the additional demand. As Mr. Hritz of AK Steel indicated at the US International Trade Commission's September 19 hearing on injury, no domestic integrated mill has ever offered to sell IF steel slabs to AK because IF steel slabs are in short supply.[9] Every ton of IF steel slab produced will be internally consumed since it represents a high profit product for the integrated industry. Even mills those US mills seeking import relief on slab purchase imported IF steel slabs because of their own limited production capability.

US mills will need to import ultra-low carbon slab even under current market conditions. If the automotive market improves in the near future, however, the demand for these types of steel will become intense. US mills will simply have to import additional quantities of slab in order to compete fully in the market for finished ultra-low carbon products. If US mills are to compete effectively, therefore, there must be no restraints on the importation of these three types of ultra-low carbon slabs.

A detailed description of these ultra-low carbon slabs is as follows:

Ultra low Carbon (ULC) steel is a type of steel produced only using an equipment called Vacuum Degasser with deep vacuum capacity (less than 1 torr of vaccuum), which can obtain a Carbon content around 0,001% at the end of the process. The three most popular groups of ULC steels are:

a. Stabilized Interstitial Free Steel - IF

With the improvement in vacuum degassing capacity ULC with Carbon contents below 0,003% has become available. Since then, it has been possible to produce steel, where interstitial elements, like Carbon and Nitrogen, are completely tied up by a stabilizer as Titanium. Common ranges of IF steel have carbon contents of 0.005% max or 0.004%max or 0.003%, or even less. Titanium, columbium, or both stabilize the steel a little over its stechiometric point.

b. Bake-Hardenable Steel - BH

The essence of a bake hardening is that it is not completely stabilized. The Carbon range is a little higher than IF steel and the amount of stabilizer are not enough for a complete stabilization. This characteristic gives it the ability to increase its yield stress significantly during a paint stoving process after forming by means of a type of strain-ageing process. In the delivery condition the steel has the formability of relatively low strength steel, but in service it has a much higher yield stress. A typical example of its application is car doors. The Carbon range is usually from 0.005% up to 0.015%. A stabilizer such as titanium and/or columbium is used and some small amounts of other elements to increase its strength.

[9] Tr. at 587 (injury) (electronic version).

c. Motor Lamination Steel

The specification of this group of steels is based on the level of their electrical loss in the strips. The ones caused by Foucault current are proportional to its thickness and the ones caused by hysteresis depend on carbon, other elements like silicon and antimonium and the ferritic grain size. Ultra low Carbon steel decreases the electric loss because it has very low Carbon content, permitting a complete ferritic structure. Carbon content can range from 0.005% max up to 0.020% max depending on the resistivity specified. Usually they have additions of Silicon and Antimonium and are called non grain-oriented Silicon steel.

4. **API Specification Slab**

The situation for API specification steel, which is used to produce pipe and tube for the oil and gas industry, is similar to that of ultra-low carbon steel. US mills can produce this type of steel, but not in sufficient quantities to meet domestic demand for API-specification pipe and tube. If US mills are to produce the quantities of API-specification pipe and tube they need to be competitive in the US market, they must have unrestricted access to API-specification slabs. API specification slab must therefore be exempted from any restraints the Commission may impose on slab.

III. THE SAFEGUARDS STATUTE REQUIRES A NARROWLY TAILORED REMEDY AND THEREFORE AUTHORIZES THE EXCLUSION OF CERTAIN PRODUCTS

The USTR's proposed remedy should avoid causing more economic harm than good to the national economy. Any 201 remedy should not deny steel consumers access to those specialty products, unavailable from the domestic industry, that could not possibly cause or threaten serious injury to the domestic steel industry. The law mandates that the USTR's proposed remedy regarding these fairly traded imports be no more restrictive than necessary to prevent or remedy the serious injury or threat thereof.[10] Moreover, the president may only implement relief that bestows greater benefits on producers than harm on consumers. The law and the facts demonstrate that the USTR has the responsibility and the ability to craft just such a remedy in this case.

The USTR has ample statutory authority to exclude products from its proposed remedy which do not cause or threaten serious injury to the domestic industry. Under section 203, the President must balance the economic welfare of the country – including the interests of other industries and consumers – against that of the affected domestic industry, and "take all appropriate and feasible action within his power {to} facilitate efforts by the domestic industry to make a positive adjustment to import competition *and provide greater economic and social benefits than cost*."[11] Accordingly, the president

[10] 19 U.S.C. § 2253 (a)(3)(C).

[11] 19 U.S.C. § 2253(a)(1)(A) (emphasis added).

must consider "the short and long term economic and social costs of the actions authorized . . . relative to their short and long term social benefits and other considerations relative to the position of the U.S. industry in the U.S. economy."[12] The president must also consider "other factors related to the national economic interest of the United States, including, but not limited to . . . . the effect of the implementation of actions . . . on consumers and on competition in domestic markets."[13]

Under these balancing tests, despite majority Commission serious-injury determinations, Presidents Reagan and Carter refused to provide import relief under section 203 when they determined that it was not in the national interest. President Reagan decided not to provide any import relief in *Nonrubber Footwear* because he determined that the benefits to the industry would be temporary and outweighed by the costs to consumers and international trade.[14] President Reagan also declined to provide import relief in *Copper*, because doing so would have seriously disadvantaged the copper fabricating industry.[15] President Carter determined that providing import relief would not be in the national economic interest in *Certain Stainless Steel Flatware* and in *Bicycle Tires and Tubes* because sectors of the relevant domestic industries were considered competitive and profitable.[16] In *Certain Fishing Tackle*, President Carter denied import relief because market conditions had improved.[17] In *Unalloyed Unwrought Copper*, President Carter found that providing import relief would have undermined the competitiveness of the U.S. copper-fabricating industries and would have had a widespread inflationary impact.[18]

The USTR must keep these presidential prerogatives in mind when crafting a remedy, and ensure that its recommendations would not unduly harm steel consumers, cost more jobs than might be preserved, or needlessly fuel inflation.

IV. PRECEDENT ALLOWS FOR THESE EXCLUSIONS

There is substantial precedent in this very proceeding to exclude products from any 201 remedy. Annex II to the U.S. Trade Representative's request for investigation specifically excluded many products that are not available from U.S. producers. These exclusions reflected a recognition by the government that certain products whose imports do not injure the domestic industry should be excluded from the scope of this case.

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12 19 U.S.C. § 2253(a)(2)(E).

13 19 U.S.C. § 2253(a)(2)(F)(ii).

14 Nonrubber Footwear Industry: Message to the Congress, 1985 Pub. Papers 1009 (Aug. 28, 1985).

15 Copper Import Relief -- Letter to the speaker of the House and the President of the Senate, 20 Weekly Comp. Pres. Doc. 1240 (Sept. 6, 1984).

16 *Operation of the Trade Agreements Program*, USITC Pub. 1021 at 4 (1978).

17 *Id.*

18 *Id.*

Product exclusions are a common occurrence in Section 201 cases. President Clinton excluded artic line pipe from the remedy in *Certain Circular Welded Carbon Quality Line Pipe*.[19] Also, President Reagan approved several exemptions in *Certain Stainless Steel and Alloy Tool Steel*, stating:

> I determined to impose additional tariffs and quantitative restrictions, with exemptions for certain articles which are not produced in the United States or are produced in such small quantities that their exemption would not have an adverse impact on the domestic industry.[20]

This standard established by President Reagan is sound and should be used a guide for excluding products in this investigation.

The president is not limited to the exclusions recommended by the ITC. It is yet unclear whether the ITC will recommend exclusion of any specialty products. Indeed, the ITC discouraged parties from discussing exclusion requests during the public remedy hearings. If the ITC does not make any recommendations about specialty products, it is vital that the USTR take an aggressive role in pursuing exclusions.

The President has the authority to exclude more products than what the ITC recommends to be excluded in its remedy recommendations. For example, in *Certain Steel Wire Rod*, Commissioners recommended that certain products should be excluded because purchasers would be needlessly affected by relief on products that were not available from domestic producers or in sufficient quantities to satisfy demand.[21] The President agreed, excluding several products from the relief -- over the objections of domestic producers.[22]

Thus, the President has the demonstrated authority, consistent with his statutory obligations, to craft a remedy that excludes products that neither substantially cause nor threaten serious injury to the domestic industry. The requested exclusion for slab meets this standard.

V. OTHER INFORMATION REQUESTED BY USTR

1. Product Designation And HTS Classification

There is no set product designation, except to the extent specified according to specialized applications, such as the specialized grades discussed in Section II of this

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19 *See* Proclamation No. 7274, 65 Fed. Reg. 9196 (Feb. 18, 2000).

20 *See* Proclamation No. 5074, 48 Fed. Reg. 33233 (July 19, 1983) (emphasis added).

21 *Certain Steel Wire Rod*, TA-201-69, USITC Pub. 3207 at I-56 (Jul. 1999) (separate views of Chairman Miller and Commissioner Koplan).

22 *See* Proclamation No. 7273, 65 Fed. Reg. 8621 (Feb. 18, 2000); *Technical Correction to the Harmonized Tariff Schedule of the United States*, 65 Fed. Reg. 13,815 (USTR Mar. 14, 2000).

letter. All carbon and alloy steel slabs enter the U.S. market under HTS classifications 7207120010, 7207120050, 7207200025, 7207200045, 7224900055.

2. **Product Description**

In general, carbon and alloy steel slabs are described as semifinished steel produced by continuous casting or by hot rolling or forging. Slabs of carbon steel have a rectangular cross-section with a width at least two times the thickness. Slabs of other alloy steel have a width at least four times the thickness.

3. **Basis For Requesting Exclusion**

This is provided for in Section I of this letter, above.

4. **Names And Locations Of Domestic And Foreign Producers**

Every U.S. flat rolled steel producer with steelmaking capacity that is a party to this investigation is a producer of carbon and alloy steel slab. The following Brazilian mills are producers of carbon and alloy steel slab: Aço Minas Gerais, S.A. (Belo Horizonte, Brazil), Companhia Siderúrgica Nacional (Rio de Janeiro, Brazil), Companhia Siderúrgica Paulista (Sao Paulo, Brazil), Companhia Siderúrgica de Tubarão (Serra, Brazil), and Usinas Siderúrgicas de Minas Gerais (Belo Horizonte, Brazil).

5. **Total U.S. Consumption And Projections**

According to the ITC's staff report in this investigation, total U.S. consumption of carbon and alloy steel slab between 1996 and interim 2001, in short tons, was as follows:

1996	**1997**	**1998**	**1999**	**2000**	**Through June 2001**
65,464,540	66,414,425	64,696,646	67,240,547	67,681,705	30,436,531

In terms of projections through 2005, as demand for finished steel in the U.S. market regains momentum, demand for carbon steel slab will also increase since slab is the input for finished steel flat products. Demand for the value added grades discussed in Section II of this letter are likely to increase at a faster rate than overall demand, particularly among the low carbon grades, as the auto industry and other industries begin to rely more heavily on these grades of steel to produce their finished products.

6. **Total U.S. Production**

According to the ITC's staff report in this investigation, total U.S. production of carbon and alloy steel slab between 1996 and 2000, in short tons, was as follows:

1996	1997	1998	1999	2000
58,582,640	60,412,703	59,710,167	58,284,219	60,247,980

Brazilian producers do not have data on domestic production of the specific grades and specification of carbon steel slab described in Section II of this letter, though it is understood that the domestic industry does not have the capacity to meet demand for such grades.

7. **Commercial Substitutes**

Carbon steel slab is an input for the production of finished flat rolled steels. There are no commercial substitutes for carbon steel slab.